IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9267 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARESHBHAI CHAGANBHAI SOLANKI

Versus

SECRETARY,

Appearance:

1. Special Civil Application No. 9267 of 2002

MR BS BRAHMBHATT for Petitioner No. 1

..... for Respondent No. 1

Mr. P.D. Bhate, AGP for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 17/06/2003

ORAL JUDGEMENT

This matter was notified yesterday 16.6.2003 and

since it was partially heard, has been taken up for hearing.

Heard learned advocate Mr. Brahmbhatt for the petitioner and Mr. Bhate, learned AGP for the respondents. Rule, service of which is waived by the learned AGP Mr. Bhate for the respondents. In the facts and circumstances of the case and with the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

As per the facts of the present case, benefits of higher grade has been granted in favour of the petitioner by the respondents by order dated 11th November, 1997 which is at page 12 of the petition and accordingly, the petitioner was receiving benefits flowing from the said order dated 11th November, 1997. It is the grievance of the petitioner that the respondents have, by order dated 9th August, 2002, cancelled the order dated 11th November, 1997 without giving any opportunity of being heard to the petitioner. Learned advocate for the petitioner Mr. Brahmbhatt has submitted that the respondents have cancelled the order dated 11th November, 1997 without hearing the petitioner and without affording any opportunity to the petitioner in that regard and, therefore, same is contrary to the principles of natural justice and, therefore, on that ground alone, the order dated 9th August, 2002 cancelling the order dated 11th November, 1997 is required to be quashed and set aside. As against that, it was the submission of the learned AGP Mr. Bhate that it was the mistake on the part of the respondent authorities and the same was rectified and corrected by passing the order dated 9th August, 2002 and as such, it was not necessary for the respondents to hear the petitioner before passing the order dated 9th August, 2002 for cancelling the earlier order dated 11th November, 1997 as per the principles of natural justice. Mr. Brahmbhatt appearing for the petitioner has submitted that in such a situation, it is necessary to hear the person who is likely to be adversely affected. He submitted that the order dated 9th August, 2002 is having civil consequences and for that, hearing and compliance of the principles of natural justice is necessary. He submitted that therefore, the order dated 9th August, 2002 is required to be quashed and set aside on that ground alone, without observing anything on the merits of the matter.

I have considered the submissions made by the learned advocates for the parties. I have also considered the averments made by the petitioner in the

memo of petition. It is not in dispute that the order dated 11th November, 1997 was passed in favour of the petitioner for giving him the benefits of higher grade and till this date, the petitioner was enjoying the benefits flowing from the order dated 11th November, 1997. It is also not in dispute that the respondents have, by order dated 9th August, 2002, cancelled the earlier order dated 11th November, 1997 wherein benefits of higher grade were granted in favour of the petitioner and, thereby, the benefits flowing from the order dated 11th November, 1997 have been taken away from the petitioner, without hearing the petitioner though the same is having civil consequences. Thus, from the facts on record, it is clear that the order dated 9th August, 2002 having civil consequences against the petitioner has been passed without hearing the petitioner and, thus, it is an order passed by the respondents in violation of the principles of natural justice.

The law in this regard has time and again been examined by this Court as well as the Hon'ble apex court that in case when an adverse order having civil consequences has been passed by the department against an employee, even in case when the mistake has been rectified, reasonable opportunity must be given to the person who is likely to be adversely affected because of such order having adverse civil consequences. View to that effect has been taken by the Hon'ble apex court in case of DIVISIONAL SUPERINTENDENT, EASTERN RAILWAYS, DINAPUR AND OTHERS V. L.N. KESHRI AND OTHERS REPORTED IN AIR 1974 SC 1889. Similar view has been taken by the Hon'ble apex court in case of BHAGWAN SHUKLA V. UNION OF INDIA AND OTHERS reported in AIR 1994 SC 2480. Similar view has been taken by this Court in case of SAVDAS BHOVAN JULSANA V. STATE OF GUJARAT & ORS. reported in 1996 (2) GCD 382 (Guj) wherein the reduction of pay by fixing the same in lower pay scale as well as the order to recover excess amount paid was held to be resulting in civil consequences, violative of the principles of natural justice and, therefore, same was set aside by this court. Similar view has been taken by this court in case of SHANKERLAL NAGARDAS PATEL VERSUS TALUKA DEVELOPMENT OFFICER reported in 1997 (2) GLR 793.

In case of BHAGWAN SHUKLA V. UNION OF INDIA AND OTHERS reported in AIR 1994 SC 2480, the Hon'ble apex court has observed as under:

"3. We have heard learned counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at Rs. 190.00 p.m. is not

> disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs.181.00 p.m. in 1991 retrospectively w.e.f.18.12.1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his basic pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There, has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter. Since that was not done, the order (memorandum) dated 25.7.1991, which was impugned before the tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The order of the tribunal deserves to be set aside. We accordingly accept this appeal and set aside the order of the Central Administrative Tribunal dated 17.9.1993 as well as the order (Memorandum) impugned before the tribunal dated 25.7.1991 reducing the basic pay of the appellant from Rs.190.00 to Rs.181.00 w.e.f. 18.12.1970."

The petitioner herein has obviously been visited with civil consequences without granting any opportunity to show cause before passing the order dated 9th August, 2002 for cancelling the order dated 11th November, 1997. The petitioner was not even put on notice before his basic pay was reduced by the department and the order dated 9th August, 2002 came to be made behind his back without following any procedure known to law and, therefore, same is violative of the principles of natural justice and fair play. I am, therefore, of the opinion that the impugned order dated 9th August, 2002 is required to be quashed and set aside on that ground alone without observing anything on the merits of the matter.

For the reasons recorded hereinabove, this petition is allowed. Impugned order dated 9th August, 2002 is hereby quashed and set aside without entering into the merits of the matter and with a liberty in favour of the respondents to pass appropriate order in

accordance with law in that regard after affording reasonable opportunity to petitioner. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Dt.17.6.2003. (H.K. Rathod,J.)
Vyas